

APPEAL NO. 010500

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 7, 2001. The hearing officer determined that the appellant (claimant) failed to make a good faith search for employment as set out in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.102(d) (Rule 130.102(d)) and thus was not entitled to supplemental income benefits (SIBs) for her 13th quarter.

The claimant argues that nothing has changed from previous quarters where she was paid SIBs and, consequently, she should still be entitled. The claimant argues that she was unable to work during the qualifying period, as proven by her doctor's letters. The respondent (carrier) responds that the decision should be affirmed.

DECISION

We affirm the hearing officer's conclusion that the claimant is not entitled to SIBs for the 13th quarter, based upon the record.

The qualifying period ran from July 17 through October 15, 2000. The claimant did not seek any work for the period of July 17 through August 22, 2000, contending that she was having necessary testing to gauge her fitness for school. She attended college beginning August 23, 2000, but was taking only nine semester hours. A letter from the Texas Rehabilitation Commission (TRC) stated that the claimant had started out on a vocational retraining program under the sponsorship of the TRC; the plan was devised January 23, 1998, and amended April 13, 1999, according to a letter from the claimant's original TRC counselor. However, no copy of the plan was offered into evidence. The claimant's counselor stated that TRC was not paying for the claimant's college courses in fall 2000 because she exceeded financial guidelines, and since the claimant was paying her tuition, the TRC could not require that she take 12 semester hours as they would if TRC were paying. The counselor's letter said that TRC "assisted" with the cost of her textbooks, although the claimant testified that she received no financial assistance from TRC during the qualifying period.

The hearing officer was mistaken to the extent that he held that the claimant's lack of attendance in school or her failure to look for a job during some of the qualifying period would preclude entitlement. In Texas Workers' Compensation Commission Appeal No. 001536, decided August 9, 2000, the Appeals Panel held that Rule 130.102(d) is written so that fulfillment of any one subdivision of subsection (d) may be reviewed as meeting a good faith search for employment. Because the claimant asserted that she qualified because she undertook training with the involvement of TRC, the applicable provision is Rule 130.102(d)(2), which states that good faith can be met if the injured worker:

- (2) has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the [TRC] during the qualifying period.

As Appeal No. 001536 stated, attendance in a TRC-sponsored program as described in the rule is not required in every week of the qualifying period, but only "during" that period. As the claimant pointed out at the CCH, there are no rules setting a minimum number of hours as "full time." The elements of a full-time vocational program are described in Rule 130.101(8), and consist primarily of adherence to a prescribed plan that sets goals, describes TRC services to be rendered, and details the injured worker's responsibilities. It does not appear that the hearing officer applied the holding in Appeal No. 001536.

However, although the hearing officer made no express findings on the nature of the claimant's training, we need not remand for further consideration because the record would not support a finding that the claimant was enrolled during the qualifying period in a "full time" program sponsored by the TRC according to any plan. There is no plan in evidence, although one is alluded to. The letter from the TRC counselor indicates that the claimant is paying for her tuition (in essence, that TRC is no longer the sponsor) and that because of this the TRC cannot enforce a requirement that the claimant attend 12 semester hours of class. We believe that this "requirement" is the TRC's definition of what it considered to be a "full time" program under the claimant's plan and in the absence of evidence that this requirement was expressly waived during the qualifying period as part of a plan for the claimant, a determination in her favor under Rule 130.102(d)(2) would not be supported.

Finally, to the extent that the claimant argues that letters from her doctor, Dr. C, support her contention of an inability to work, we note that these letters were not admitted into evidence because the carrier objected, and was sustained, that such had not been timely exchanged as required by Section 410.160. Each quarter is evaluated on its own facts, and payment of SIBs in any earlier quarter cannot guarantee uninterrupted payment for all future quarters.

We will uphold the hearing officer's judgment if it can be sustained on any reasonable basis supported by the evidence. Daylin, Inc. v. Juarez, 766 S.W.2d 347, 352 (Tex. App.-El Paso 1989, writ denied); Texas Workers' Compensation Commission Appeal No. 950791, decided July 3, 1995. The hearing officer did not err in concluding that the

claimant failed to prove that she made a good faith search for employment and was not entitled to SIBs for the 13th quarter. We affirm his decision and order for the reasons set forth above.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge